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THE UNITED STATES, APPELLANT,
v.
JOHN SMITH. } No. 184.

APPEAL FROM THE COURT OF CLAIMS.

SUPPLEMENTARY BRIEF FOR THE UNITED STATES.

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Pursuant to the wishes of the Secretary of the Navy, this additional brief, relating especially to the proceedings in navy courts-martial, has been prepared by the Solicitor of the Navy Department.

The present appeal brings before this court the record of an ordinary naval court-martial. That record is set out in full in the findings of fact made by the court below. It is not a selected record, is brief, and in itself discloses nothing especially interesting or unusual.

There is no contention in this case that the person accused did not commit the offense charged, or that he

was too severely punished. An inspection of the record shows that no such contention could stand for a moment. There is here no question of righting a wrong. The accused substantially admitted his guilt in his written statement to the court-martial, and aside from such admission the facts set forth in the specification were conclusively established by the testimony adduced. (Transcript of record, pp. 13–15.)

The decision of the Court of Claims in favor of the appellee does not, therefore, turn upon the question of his guilt or innocence, or the adequacy of his punishment; it does not touch the merits of the matter; it merely declares that a statute directing what should be done at a particular stage of the proceedings was not observed, as the Court of Claims reads that statute; and that consequently the court-martial was without jurisdiction.

The statute in question is article 43 of the articles for the government of the Navy (section 1624, R. S.), and contains this clause:

> The person accused shall be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest.

The phrase "at the time he is put under arrest" has always been understood by the Navy to refer to arrest for trial, but the Court of Claims holds in effect that it means the arrest to which the accused is subjected when taken into custody immediately upon the commission or discovery of the offense, or upon his surrender, if such surrender takes place, or upon his

capture if he had escaped. Further, because John Smith, the person accused in the matter on appeal, was not furnished with a copy of the charges, with the specifications, at the time when, upon commission of the offense, he was taken into custody, the Court of Claims has declared that the naval general court-martial was in this case without jurisdiction, has pronounced its proceedings to be null and void, and has decreed that the fines imposed by such court be refunded by the United States. It is proper to state that this decision was rendered by a divided court, Mr. Justice Peelle dissenting. (Transcript of record, p. 8.)

The grounds upon which this appeal is taken are several. They are fully presented in the principal printed brief for the Government.

From the standpoint of naval administration we find the results that must follow the decision rendered by the Court of Claims in this case to be of such grave consequence that we ask the indulgence of this court, in order that we may lay before it for consideration some features of the matter deemed necessary to be taken into account in dealing with this statute, if its true meaning is to be ascertained.

The officers charged with the administration of this statute have in practice treated the word "arrest," as used in article 43, as meaning "arrest for trial." The practice has been entirely uniform. It has prevailed for more than forty years. If, after such long period, the true meaning of this provision has at last been found, it seems to follow that fines, in large

amount, have been illegally imposed by naval courts and collected by the United States, and that such moneys should be refunded. Furthermore, officers have been dismissed and men dishonorably discharged from the service; officers now on the active list have been reduced in rank, and others correspondingly advanced; and officers and men have been confined in naval prisons and in State penitentiaries at hard labor, all without warrant of law.

If the Court of Claims is right in this matter the naval prisons at Boston and Mare Island will and ought to be speedily emptied, and naval prisoners at the State penitentiaries at San Quentin and Wethersfield will and ought to be promptly released. Assuredly, men confined there should not be held for one moment if this court should conclude that the tribunals that sent them to prison were without jurisdiction, and the sentences imposed illegal, null, and void.

The Court of Claims appreciated the gravity of its ruling in this matter. In its last action (an order overruling a motion to set aside and dismiss—transcript of record, p. 28), that court said:

> This case has been twice elaborately argued and carefully considered (36 C. Cls. R., 304; 38 ibid.), to wit, when it was determined upon demurrer and upon the evidence. The record states with unusual fullness and clearness every fact which will enable the Supreme Court to pass upon the questions of law involved. The amount involved in this case is trivial, but *the questions of law presented by it are of very grave importance.*

HISTORY OF THE CASE.

On the 26th of May, 1899, the U. S. S. *Yorktown*, one of the vessels of the Asiatic squadron, was at anchor in Iloilo Harbor, Philippine Islands. Serving on board that vessel at the time was a fireman of the first class, John Smith by name, who, being the next man for duty, was ordered to take the watch from 12 to 4 p. m. This order he refused to obey. A question of discipline was thus presented. (Transcript of record, p. 15.) Refusal to obey orders is a serious matter in any military organization. It is, therefore, the practice in our Navy, before treating the offense as such, to make sure that the order is clearly understood, and that the refusal is intentional and deliberate. The record (transcript of record, p. 15, q. 8) shows that this was done in Smith's case. The order, first given by the chief machinist, a petty officer, was presently repeated by the senior engineer officer on duty. Smith again, and positively, refused to obey.

The facts were then reported to the captain, who, it is assumed and not controverted, gave Smith the preliminary hearing at the mast prescribed by the regulations (Then article 1035, now article 1073, United States Navy Regulations, brief, p. 29. See particularly statement by the Judge-Advocate-General of the Navy showing the practice in this particular step by step from commission of the offense to time of trial, Appendix A, p. 26.)

At the mast a man is informed of the reports against him. The witnesses are named, and he is given an

opportunity, but not ordered, to make explanation or denial. In this case the record shows that Smith knew just what his offense was, and that he intended to commit it. His reason for refusing to obey the order was that he thought too much duty was being required of him. He had been on duty four hours on watch from 4 a. m. to 8, and after that four hours at work from 8 a. m. to 12, and he was ordered to take the watch from 12 to 4. This he thought was too much. That is his side of the story. (See his statement, transcript of record, p. 19.) The other side is that the ship was in port; that some of the men were on liberty (transcript of record, p. 14); that the ship's duty had to be done by those who were left; and that all alike, if deserving, would in turn share in the benefits of this arrangement.

The chaos that would result in any military organization if enlisted men were permitted to judge whether they ought to obey an order or not, before doing so, need not be discussed. Smith's judgment in such a matter is to some degree discredited by the fact that his conduct record was low under the heading of "sobriety," and zero under the heading of "obedience." Within a year he had been in confinement thirty days on bread and water with loss of one month's pay, for insolence to the officer of the deck. (Transcript of record, p. 21.)

Just what took place at the preliminary hearing at the mast we do not know. A mast hearing is not a court, and what is said and done there is not set down in writing. It is assumed that, as there was no justifi-

cation for his conduct, Smith's explanation was unsatisfactory.

The next step in the case is shown by the log book of the *Yorktown*. The commanding officer directed that Smith be put "under sentries as a prisoner in single irons for safe-keeping to await trial by general court-martial."

Right at this point, according to the Court of Claims, John Smith should have been "furnished with a true copy of the charges with the specifications." The situation presents a good example of the value of what has been called "the contemporaneous construction of a statute by officers charged with that duty." The captain of the *Yorktown*, on the spot and obliged to act, looks at the statute from a different point of view from that occupied by the Court of Claims. He is in the vivid presence of the conditions for which article 43 and other statutes on this subject were enacted. He has no charges and specifications duly drawn up and ready to deliver to the accused. In the nature of things that was impossible. It is no part of his duty to draw such papers. If he did so he might make a mistake, and a mistake here, under the decision of the Court of Claims, is fatal. It would be as bad to deliver the wrong charges and specifications as to deliver none. The captain has no right to usurp the functions or hamper the discretion of higher authority, and it is to higher authority that the law (article 38) jealously reserves the power to convene general courts-martial.

Smith's offense was a general court-martial offense;

and accordingly the captain, exercising his powers under article 24, held the accused in custody to await orders from the commander in chief.

What else could he do? Discipline had been defied, and discipline is the vital air of a ship of war. The offender must either be taken into custody or left at large to mingle with the crew, and, it might be, to cause further trouble or, perchance, effect his own escape. To an officer of the Navy trained in traditions of discipline, accustomed to regard obedience to lawful orders as above all considerations of personal comfort and convenience, as paramount even to personal safety or life itself on occasion; to a commanding officer charged, as in this instance, with important independent duty and responsible for the efficiency and honor of an American fighting ship, such a course, naturally, would not suggest itself, and probably never has been entertained as a possibility. Accordingly, the commander of the *Yorktown* put John Smith, fireman, not in close confinement, as the court below seems to assume, but "*under sentries* in single irons, to wait trial by general court-martial."

This was in accordance with immemorial usage extending through the entire history of our own Navy and traceable beyond that to the practice of Great Britain. Article 5 of the regulations and instructions relating to His Majesty's service at sea, published in 1772 (p. 46), reads in part:

> The captain is never by his own authority to discharge a man or warrant officer, nor to punish

> or strike him; but if any are *disobedient to command* * * * he may suspend or *confine* them, *and when he comes in the way of a commander in chief apply to him for holding a court-martial.*

This is affirmed in almost identical language in the rules for the regulation of the Navy of the United Colonies passed November 28, 1775. See also "An act for the government of the Navy," approved March 2, 1799 (1 Stats., 709); and general regulations for the Navy and Marine Corps of the United States, 1841, published by the Navy Department, articles 479 and 482. American Archives, Vol. III, 1775, fourth series, page 1930.

So the commanding officer of the *Yorktown*, surely with every wish to obey the law, but reading the statute in his uniform and on the spot, in the light of naval traditions, usages, customs, and regulations, and having upon him not one only, but all responsibilities of command, did not at this point undertake to furnish the accused with the charges and specifications, as the Court of Claims says he should have done, but instead caused him to be held, under guard, to await action by higher authority. Right, according to the Navy Regulations (article 1077, Regulations, last clause, transcript of record, p. 30), was he wrong according to the letter of the statute?

THE LETTER OF THE STATUTE.

The court below rules that "the statute means what it says." (Transcript of record, p. 24.) What does it

say? "The accused shall be *furnished* with a *true copy* of the charges." This does not mean that he is to be informed orally, but he is to be "furnished" with something. A rough memorandum will not meet this requirement. It calls for a *true copy*. The charges must therefore be put in writing, and sufficient time to do this allowed. Further, he must be furnished with a true copy of the charges, *with the specifications*. These words are so full of meaning that, alone, they would seem sufficient to sustain the naval practice. It would be hard to find a phrase that speaks more surely of careful inquiry into the precise character, quality, and degree of the offense, or of painstaking care in preparation, than the words "the charges, with the specifications." The phrase is a term of art. It is language of precision. It suggests to the mind a criminal indictment, to which, indeed, the charges and specifications are analogous. (Transcript of record, p. 7.) Such an indictment is not framed in a moment, or an hour; seldom in a day. It involves preliminary hearing and investigation, and necessarily some lapse of time. Charges and specifications are not carried about, ready made, to be handed over to every person accused at the time he is put under arrest, if by arrest is meant apprehension when the hand of justice is first laid upon the offender. Each word used in this provision, "a true copy of the charges, with the specifications," more than indicates, it imports, that the arrest meant is not any preliminary arrest, but an arrest taking place some time thereafter, i. e., the arrest for trial.

Carrying examination of the letter of this statute a step further, we find that it refers to grave offenses only. The words are, the *charges with the specifications*. That means a general court-martial. Naval offenders may be punished by three instrumentalities. First, for minor offenses, by the commanding officer directly, under article 24; second, for more serious offenses, by summary court-martial, under article 30; third, for grave offenses, by general court-martial, under article 38.

In the case of the first, charges and specifications are not used. The commanding officer simply exercises what is left to him of his ancient prerogatives, and punishes directly. In the case of summary courts there is no such thing as a charge; the charges and specifications are blended in one or more specifications. It is to general courts only that the term "charges and specifications" applies. This statute, therefore, by its express terms refers to general courts, which may be convened only by the President, by the Secretary of the Navy, or by a commander in chief. These authorities can not be assumed to be present or immediately accessible when offenders are put under arrest. All this tends to confirm the conclusion that this requirement relates to arrest for trial and not to any preliminary arrest.

Again, as this statute by its letter has to do with serious military offenses only, can it be supposed to mean that offenders who may have committed almost any grave crime on the calendar, are to go at large

pending the preparation of charges and specifications? Is a man who is drunk and disorderly, insolent, insubordinate, mutinous; a man who has committed an assault, manslaughter or murder, not to be arrested until the commander in chief, who may be a thousand miles away, or the Secretary of the Navy, who may be ten thousand miles away, can be reached? Is a deserter whose whereabouts are suddenly discovered to be permitted to go at large, pending such communication with higher authority? These questions appear to answer themselves when it is remembered that we are dealing with a military organization. (*United States* v. *Clark*, Fed. Rep., vol. 31, p. 713.)

Still examining the letter of the statute, we find that the language is "*at the time* he is put under arrest," not on the same day, but at the time. Under the naval interpretation, the use of the word "time" instead of "day" is intelligible. It is precise. The delivery of the charges and specifications is always contemporaneous with "arrest for trial." Such arrest is usually, but not always, formal in the case of an officer, and is usually, but not always, constructive) that is, it is effected by the act of delivery of charges and specifications) in the case of an enlisted man. The use of the words "*at the time*" are very significant here, since it is physically impossible in most cases, under any theory of this statute, to deliver to the person accused the charges and specifications at the time, that is, at the very moment of his original arrest, while this may be, and in practice always is, done at the time of arrest for trial.

This statute, from its nature, has usually been administered by officers in local command, afloat or ashore. They have all, in like cases, done as the commander of the *Yorktown* did. Doubtless the construction adopted by the court below never occurred to any of them. The very letter of the law would probably have satisfied them, if the question ever arose, that "arrest for trial" was the true and only reasonable meaning. This is "what the law says," as they read it. So much as to the letter of the statute.

The *Yorktown*, with the accused on board, remained at Iloilo until June 27, on which date she left for Manila. June 29, at 3.50, as the log shows, the vessel "anchored off the flagship *Baltimore* at Manila." Rear Admiral Watson, commander in chief United States naval forces on Asiatic station being then present, the court was convened without delay. Under the authority vested in him by article 38, section 1624 of the Revised Statutes, Admiral Watson, June 30, 1899, convened a general court-martial, and (transcript of record, pp. 17 and 18) forwarded to such court "charge with specification against John Smith, fireman first class." Smith was at once placed in double irons for safe-keeping, and the charge and specification were read to him. This effected a change in his status. *This was the arrest meant by the first clause of article 43.* If he had been an officer it would have been signified by the surrender of his sword. In Smith's case such arrest was marked only by a more rigorous restraint and by delivery of the charge with the specification.

Four days later, at 10 a. m., July 5, 1899, the court assembled. The accused in reply to an inquiry by the judge-advocate, in open court, stated that he had received a copy of the charges with the specifications preferred against him, 10.30 a. m. July 1, 1899, and that he was ready for trial.

The evidence was brief and to the point, and left no doubt as to the guilt of the accused. In his statement to the court (transcript of record, p. 19) Smith says that he felt the order was an injustice to him, and adds:

> It was my intention, *when I refused to take the watch*, to see the commanding officer and protest against what I considered this injustice to me, but I became excited and said more than I intended. *I realized afterwards that I should have obeyed the order first and then appealed* to the commanding officer.
>
> I beg the court, in adjudging my case, to take into consideration the excitement under which I was at the time, and the extra amount of work required of me.

After this statement, and in view of the testimony, there was nothing to do but to find the accused guilty, and in consideration of the circumstances to give him a moderate sentence. This the court did. The maximum sentence for the offense of "refusing to obey the lawful order of a superior officer" (article 63, Articles for the Government of the Navy, Navy Regulations, 1900, pp. 486–487) is, in the case of an enlisted man, "confinement for two years and dishonorable discharge." The court gave Smith one year.

The record was approved by the commander in chief July 7, 1899. (Transcript of record, p. 17.) It was forwarded to the Department in due course, and was carefully examined there. The usual general court-martial order (No. 75–1899) was issued, and, as a first act in the direction of clemency, the period of confinement was made to take effect from July 7, 1899, the date of approval of the sentence. (Transcript of record, p. 22.) All records of general and summary courts-martial, wheresoever held, are thus carefully reviewed under the direction of the Secretary of the Navy. This review is a lawful procedure, which amounts practically to appellate supervision. Without the approval of the convening authority no sentence of a court-martial can be carried out. Undoubtedly such reviewing authority, "in passing upon the sentence of a court-martial and giving to it the approval without which it can not be executed, *acts judicially*." (*Runkle* v. *United States*, 122 U. S., 543–555–558.)

Smith arrived at Mare Island August 31, 1899. Subsequently, by letter dated January 30, 1900, to the commandant, the Department, upon the recommendation of the Judge-Advocate-General, remitted the last five months of his term of confinement. He was therefore actually confined at the Mare Island prison less than six months, and his confinement under this sentence, from July 7, 1899, to date of release, was about seven months. If we add thereto the time he spent under sentries before trial, the total consequences of his offense involved for him but little more

than eight month's confinement. Does not the history of this case indicate that the naval authorities were guarding the interests of the accused, as well as those of the service, with scrupulous impartiality?

With his discharge from the Mare Island prison, the "John Smith" of these proceedings disappeared. So far as the records show, he has never been seen or heard from since that event.

When the case was taken to the Court of Claims it was first heard upon demurrer, raising the question of the jurisdiction of that court over the proceedings of the court-martial. The Court of Claims held, however (Mr. Justice Peelle dissenting), that it ought to take jurisdiction of the case, and did so. It appears from an examination of the ruling upon demurrer (transcript of record, p. 6) that the court assumed that the claimant was not furnished with a copy of the charges *at any time* before the trial. This inference was, of course, erroneous. If such had been the fact, the case would never have reached the Court of Claims. It would have been set aside by the convening authority or by the Secretary of the Navy. Such a defect would have been fatal.

Afterwards, upon the facts, the majority of the court (Mr. Justice Peelle again dissenting), pronounced the court-martial proceedings a nullity. The only question then considered was, as the court expressly says (transcript of record, p. 23), "whether a seaman arrested on board his ship at Iloilo, P. I., on the 26th day of May, can be kept in close confinement and carried

to Cavite, P. I., and not be made acquainted with the charges preferred against him until the 1st of July following." As a matter of fact Smith was not kept in "close confinement;" and, as the record shows, he was acquainted with the charges against him from the very first. He had them in writing four days before the trial.

It is not the business of Executive authority to make the laws nor, in the last resort, to interpret them. Under certain circumstances, however, the head of a Department may ask the advice of the Attorney-General upon a pending question of law. The question at issue was raised in 1890 by the same attorney who has since brought it up in the Court of Claims. The Navy Department was then advised in the matter by the Attorney-General (19 Op., 472, syllabus) as follows:

> That there may be two arrests, namely, (1) an arrest in an emergency, or upon discovery of the alleged wrongdoing, with a view to a preliminary examination, and, if necessary, the formulation and specification of charges; (2) an arrest for trial: held, further, that article 43 in the provision declaring that "the person accused shall be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest," has reference to the arrest for trial, and not to the arrest in the first instance.

The naval theory of this statute has always been that, as so clearly stated by the Attorney-General, the first arrest is not what is meant by article 43.

If, however, that article does refer to the preliminary arrest—and conceding this for the moment—we urge that the clause is directory merely; that it ought to be observed, and that the officers failing to observe it may be guilty of neglect of duty; but that such a failure does not undermine and render nugatory all that follows. The most that can be said of such a provision is that it fixes the time when a certain thing should be done. If it is done afterward, and in time to save all substantial rights, there is no serious harm. The omission in such case "is not a disregard of the essence of the matter," in the sense in which those words are used in *Dynes* v. *Hoover* (20 Howard, 65–82). The precise time of the delivery of charges and specifications to the accused has nothing to do with the convening of the court, its organization, or its jurisdiction.

We are confirmed in this view by the decision of this court with regard to a like preliminary statutory requirement, that relating to the oath to be taken by the judge-advocate.

Article 85 of the Articles of War (Army, section 1342, R. S.) prescribes that the judge-advocate of an army court-martial shall be sworn. It goes further and gives the precise language in which the oath shall be administered. In the case of General Swaim this statutory requirement was not observed. (*Swaim* v. *The United States*, 165 U. S., p. 561.) The objection that the judge-advocate had not been sworn being, with other matters, under consideration, this court said:

> It was the opinion of the Court of Claims that the errors so assigned could not be reviewed collaterally, and that *they did not affect the legality* of the sentence; and in so holding we think that court followed the authorities. *Such questions are merely those of procedure*, etc.

Again, article 43 is, as the court below says, a provision of law intended for the benefit of the accused. (Transcript of record, p. 24.) In this case the accused waived its strict observance by accepting the charges and specifications four days before the trial, which was really in ample time for his purposes; by going to trial without objection; and by declaring affirmatively in open court that he was ready for trial. We understand that a person accused can not by waiver confer jurisdiction where it does not exist, but we believe that he may waive a minor statutory provision of this character intended for his own benefit. Who can say that it was not to his advantage to do so?

In *McClaughry* v. *Deming* (186 U. S., 49–66) it was found that a military court had been convened from a class of officers not legally authorized to sit; no more authorized to do so than "a like number of civilians or of women." The accused could not by any action or waiver make such an assemblage a lawful military court. As this court said, "It was not a mere *consent to waive some statutory provision in his favor which, if waived, permitted the court to proceed.*" (186 U. S., 66.) In the case on appeal, however, Smith's action was

precisely that. The naval court was lawfully constituted; had jurisdiction of the person and the case, and if Smith chose to accept the charges and specifications a little later he had a right to do so. If Smith could legally waive this requirement it is clear from the record that he did so. The naval court was not, therefore, under any construction of article 43, ousted of jurisdiction.

The question upon which this case turns has been here discussed as if it were new, open, and undetermined. This has been done out of deference to the distinguished tribunal from which this appeal is taken. But for that decision we should say that the question is not new, that it is not open, and that it has been definitely and finally determined by this court in the case of *Johnson* v. *Sayre* (158 U. S., 109). But for the decision of the Court of Claims, and if this question had elsewhere arisen, we should have used no words to discuss or dispose of it, except those employed by this tribunal in the case of Sayre.

Sayre was a paymaster's clerk in the Navy, on duty on board the receiving ship *Franklin*, at Norfolk, Va. October 10, 1894, he was *put under arrest* to await the investigation of a charge of embezzlement, and was thereafter held in custody. (Statement of the case, *Johnson* v. *Sayre*, 158 U. S., p. 110.)

He was not furnished with the charges and specifications at the time of this arrest. On the 25th of October, fifteen days after Sayre's arrest, the Secretary of

the Navy ordered a general court-martial to convene at the navy-yard in Norfolk for his trial. On the following day, "October 26, a copy of the charge and specification was delivered to Sayre."

The court-martial met October 30. In Sayre's case a court of inquiry had been held because it was necessary to examine the paymaster's books and accounts, and ascertain facts, before the Secretary of the Navy could determine whether or not a court-martial should be convened, or intelligently frame charges and specifications. A court of inquiry is merely one of many means that may be used by the convening authority to discover the facts when charges are under consideration. Whether the convening authority ascertains the facts by the aid of such a court, or through ordinary official channels of inquiry, or determines to act upon the case presented by the papers directly, is immaterial, so far as the question at issue is concerned.

There was no court of inquiry in Smith's case, none being needed. The convening authority was the commander in chief instead of the Secretary of the Navy. The court below was the Court of Claims, instead of the United States circuit court for the eastern district of Virginia. Sayre raised the question under article 43 at the court-martial instead of in the Court of Claims. So far as we are aware, these are the only differences between the two cases, and no one of them touches any vital point.

Omitting irrelevant words, the decision of this court in *Johnson* v. *Sayre* may be fitted to the present case

by simply substituting the name of Smith for that of Sayre, and making appropriate change in the convening authority. That decision contains the following paragraphs:

> The provision of article 43 of the Articles for the Government of the Navy, which prescribes that "the person accused shall be furnished with a true copy of the charges, with the specifications, at the time he is put under arrest" (on which Sayre relied before the court-martial, and in this court), evidently refers, as appears by the very next article, to the time when he "is arrested for trial" by court-martial, and not to the time of any previous arrest, either by way of punishment or to await the action of a court of inquiry. * * * Sayre, being already in custody to await the result of a court of inquiry, could not be considered as put under arrest for trial by court-martial before the Secretary of the Navy had informed him of the report of the court of inquiry and had ordeerd a court-martial to convene to try him. Immediately after that, and four days before the court-martial met, he was furnished with a copy of the charge and specification on which he was to be tried. This was a sufficient compliance with the article in question.

If this does not finally dispose of the matter now on appeal, so far as article 43 is concerned, we do not know what language the court could use that would do so.

But the court goes further, adding:

> And it is, at the least, doubtful whether the objection that it had not been sooner delivered to him did not come too late, after he had admitted before the court-martial that he had received a copy of the charge and specification, and after * * * he had pleaded not guilty, and the evidence for the United States had been introduced.
>
> The court-martial having jurisdiction of the person accused and of the offense charged, and having acted within the scope of its lawful powers, its decision and sentence can not be reviewed or set aside by the civil courts, by writ of habeas corpus or otherwise. * * * Order reversed, with directions to remand Sayre to custody.

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E. P. HANNA,
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